

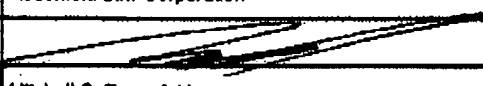
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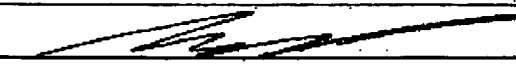
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	Filing Date	November 18, 2003	
	First Named Inventor	Cooper	
	Art Unit	3621	
	Examiner Name	Hayes, John W.	
Total Number of Pages in This Submission	17	Attorney Docket Number	JDC-002-US

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**APR 08 2005****PATENT****IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

IN RE APPLICATION OF: JONATHAN D. COOPER

EXAMINER:

HAYES, JOHN W.

APPLICATION No.: 10/716,637

ART UNIT:

3621

FILED: NOVEMBER 18, 2003

FOR: IMPROVED MONEY TRANSFER SYSTEM AND  
METHOD WITH ADDED SECURITY FEATURES**APPEAL BRIEF**

Dear Sir:

In response to the Final Office Action mailed November 8, 2004, Applicant submitted a Notice of Appeal on February 8, 2005. The following Appeal Brief is submitted within the statutory time of two (2) months from the Notice of Appeal along with the required fee of \$250.

**I. REAL PARTY IN INTEREST**

The real party in interest is the inventor, Jonathan Cooper.

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**II. RELATED APPEALS AND INTERFERENCES**

None.

**III. STATUS OF CLAIMS**

Claims 59-75 were rejected in the Final Office Action mailed November 8, 2004. The pending claims are attached hereto as an Appendix.

**IV. STATUS OF AMENDMENTS**

Claims 1-58 were filed in the pending application, which is a continuation of U.S. Appl. No. 09/648,102 filed August 25, 2000. A preliminary amendment was filed November 18, 2003, which cancelled claims 1-58 and added claims 59-75. The first Office Action was mailed July 12, 2004. An Amendment in response to the first Office Action was filed August 25, 2004. In response to the Amendment, a second Office Action was mailed November 8, 2004 rejecting

Application No. 10/716,637  
Attorney Docket No. JDC-002-US  
Applicant's Appeal Brief  
Page 2 of 15

the pending claims for the second time. The second Office Action was a Final rejection. A Notice of Appeal was filed on February 8, 2005. No Amendments are pending.

## **V. SUMMARY OF INVENTION**

The invention is directed to facilitating secure money transfers as an improved alternative to traditional wire transfer. In one aspect of the invention, an automated process is provided for sending money from a first location to a second location. The method includes the steps of receiving a request for a secure money transfer from a requestor, receiving information associated with a recipient for the secure money transfer, receiving information indicating an amount of the secure money transfer, transferring the amount to a standard atm card, assigning an access code to the standard atm card, providing the standard atm card to the recipient, and providing the access code from the requestor to the recipient. The standard atm card is a card for use in existing automated teller machines. The standard atm card and the access code enable the recipient to use the standard atm card in the automated teller machines.

In another aspect of the invention, the process also includes determining whether the recipient receives said standard atm card, and if not, providing a monetary credit to said sender. In a further aspect of the invention, the receiving information includes a delivery address personal to said recipient, and the process also includes providing the standard atm card to the recipient at the delivery address.

## **VI. ISSUES**

- A. Whether the Examiner has met the burden of proving that claims 59, 61, 68-70, 72-73, and 75 are obvious in view of Downing (U.S. Patent No. 5,963,647) and Picciallo (U.S. Pat. No. 6,044,360).
- B. Whether the Examiner has met the burden of proving that claims 60, 71, and 74 are obvious in view of Downing, Picciallo, and Ito (U.S. Patent No. 6,039,250).
- C. Whether the Examiner has met the burden of proving that claims 62-66 are obvious in view of Downing, Picciallo, and Corder (U.S. Pat. No. 5,936,221).
- D. Whether the Examiner has met the burden of proving that claim 67 is obvious in view of Downing, Picciallo, Corder, and Ito.

Application No. 10/716,637  
Attorney Docket No. JDC-002-US  
Applicant's Appeal Brief  
Page 3 of 15

## VII. GROUPING OF CLAIMS

- A. Claims 59, 61, 68-70, 72-73, and 75 stand or fall together.
- B. Claims 60, 71, and 74 stand or fall together.
- C. Claims 62-66 stand or fall together.
- D. Claims 67 stands or falls alone.

## VIII. ARGUMENT

### A. Summary

In the Final Office Action mailed November 8, 2004, claims 59, 61, 68-70, 72-73, and 75 are rejected under 35 U.S.C. §103(a) as being unpatentable over Downing in view of Picciallo. Claims 60, 71, and 74 are rejected under 35 U.S.C. §103(a) as being unpatentable over Downing and Picciallo further in view of Ito. Claims 62-66 are rejected under 35 U.S.C. §103(a) as being unpatentable over Downing and Picciallo further in view of Corder. Claim 67 is rejected under 35 U.S.C. §103(a) as being unpatentable over Downing in view of Picciallo and Corder and further in view of Ito. Applicant respectfully submits that the claimed features are not fairly taught or suggested by the references and that no motivation exists to combine the references as suggested by the Examiner.

### B. Prior Art

#### 1. Downing

Downing is directed to a system and method that support funds transfers from a source account to a cash access file for *cardless withdrawal* by both customers and non-customers of a particular financial institution. *Downing* at col. 3, lines 40-47.

Downing does NOT in anyway teach a mechanism for providing ATM cards to the recipient of a money transfer transaction. In fact, the goal of Downing is to provide for money transfers without the use of an ATM card by the recipient. This is also made clear by Downing proclamation that "it is an object of the invention to provide a system and method which support funds transfers from a source account to a cash access file for *cardless withdrawal* by both customers and non-customers of a particular financial institution." *Downing* at col. 3, 42-47 (emphasis added). Additionally, Downing states that "transfers made in accordance with the invention may be understood functionally as an 'electronic check' where the sender remains the

Application No. 10/716,637  
Attorney Docket No. JDC-002-US  
Applicant's Appeal Brief  
Page 4 of 15

'owner' of the funds until they are picked up by the recipient. *Id.*, at col. 7, lines 60-63.

Because of this fundamental goal of Downing, "settlement does not take place until the funds are actually withdrawn by the recipient." *Id.*, at col. 7, lines 53-54.

Additionally, Downing at col. 9, teaches a fund transfer procedure "without inputting a PIN and card in the conventional manner." *Downing* at col. 12, lines 16-18. This recited method of Downing not only fails to teach use of a computer readable medium, but also teaches away from use of a computer readable medium given that the Downing method is designed to eliminate use of a "PIN and card."

In sum, Downing teaches recipients can only receive transferred funds one of two ways: 1) by having an account and ATM card at the same financial institution as the sender, and 2) using a specially configured terminal (CAT) to enter verification information without the use of an ATM card.

These characteristics of Downing demonstrate that its teachings are far a field from that which is recited in all of the claims of the present application.

## 2. Picciallo

Picciallo is directed to transferring funds from a pre-established account to a third party recipient in a manner that allows control and tracking by the sender over the spending by the recipient. *Picciallo* at col. 1, lines 12-19. An object of Picciallo is to provide the sender of the funds with an itemized statement of how recipients spend the funds. *Id.*, at col. 2, lines 17-22. A further object is to allow the sender to set limits on the goods and services for which the funds are spent, or on the amounts which may be spent for certain goods or services. *Id.*, at col. 2, lines 23-28. In part, this is accomplished by transferring the funds to a secondary file. As such, the funds are still under the control of the sender.

## 3. Itoh

Itoh is directed to an electronic money sending system which send and receives money between IC cards where the system stores electronic money that is being transferred until a convenient time for the receiver to retrieve the electronic money. *Itoh* at col. 1, lines 9-46. Additionally, Ito teaches providing a refund after "a certain period of time passes." *Id.*, at col. 2, lines 42-47; col. 5, line 65 to col. 6, line 3. Ito focuses on the transfer of the electronic money,

Application No. 10/716,637  
Attorney Docket No. JDC-002-US  
Applicant's Appeal Brief  
Page 5 of 15

not the IC card which is presumed to already be in the recipient's possession. *See e.g., id.*, at figs. 1-3.

#### 4. Corder

Corder is directed to a smart card system and a method for transferring value to the smart card so that customers can use self service machines, such as laundry and vending machines, without requiring cash. The customer utilizes a central server and value added terminal to add cash value to the smart card. *Corder* at col. 1, lines 5-8; col. 2, lines 2-39.

#### C. The Examiner Has Failed To Demonstrate A *Prima Facie* Case of Obviousness

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. *MPEP* §2143.

The *MPEP* is very helpful in analyzing the first criteria -- motivation to combine. Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either explicitly or implicitly in the references themselves or in the knowledge generally available to one of ordinary skill in the art. *MPEP* §2143.01.

One particularly relevant example from the *MPEP* the absence of a motivation to combine references occurs when the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified. *MPEP* §2143.01. In such an event, the teachings of the references are not sufficient to render the claims *prima facie* obvious. *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959).

Additionally, the question of obviousness under 35 U.S.C. 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious. *Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530, 218 USPQ 871 (Fed. Cir. 1983); *Schenck v. Nortron Corp.*, 713 F.2d 782, 218 USPQ 698 (Fed. Cir. 1983) (Claims were directed to a vibratory testing machine (a hard-bearing wheel balancer) comprising

Application No. 10/716,637  
Attorney Docket No. JDC-002-US  
Applicant's Appeal Brief  
Page 6 of 15

a holding structure, a base structure, and a supporting means which form "a single integral and gaplessly continuous piece."). Likewise, a prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984)

Here, the references relied upon by the Examiner fail to satisfy any of the three criteria to establish *prima facie* obviousness. First, there is no motivation found within the references to combine them in the manner suggested by the Examiner. This is demonstrated by the Examiner having proposed a modification or combination of the prior art would change the principle of operation of the prior art invention being modified. Further, the Examiner has failed to view both the invention and the prior art as a whole. In fact, the primary reference, Downing, teaches away from the suggested combination. Second, there is no reasonable likelihood of success. Third, the references do not teach each and every element of the group 2 and group 4 claims. Consequently, Applicant requests that the Board overturn the Examiner's rejections as described below with respect to the pending claims.

**1. ISSUE A: Group 1 (claims 59, 61, 68-70, 72-73, and 75) are non-obvious in view of Downing and Picciallo.**

Claim 59 states:

59. (Previously presented) An automated process for sending money from a first location to a second location comprising:  
receiving a request for a secure money transfer from a requestor;  
receiving information associated with a recipient for said secure money transfer;  
receiving information indicating an amount of said secure money transfer;  
transferring said amount to a standard atm card;  
assigning an access code to said standard atm card;  
providing said standard atm card to said recipient; and  
providing said access code from said requestor to said recipient;  
wherein said standard atm card is a card for use in existing automated teller machines; and  
whereby said standard atm card and said access code enable said recipient to use said standard atm card in said automated teller machines.

Application No. 10/716,637  
Attorney Docket No. JDC-002-US  
Applicant's Appeal Brief  
Page 7 of 15

The Examiner asserts that the group 1 claims are obvious in view of Downing in view of Picciallo. The Examiner states that Downing "fails to explicitly disclose the use of a standard atm card configured to enable the completion of the secure money transfer and wherein the computer readable medium is delivered to the recipient consumer." To cure this deficiency in Downing, the Examiner further states that "Picciallo discloses a third party credit card method wherein an account holder can initiate a transfer of funds from a sender to a recipient and further teaches that a computer readable medium such as an atm card is configured to enable the completion of the secure money transfer using atm machines...." Office Action dated November 8, 2004 at p.3. As for a motivation to combine, the Examiner does not point to any teaching in the references. Rather, the Examiner states that "these mediums are so well known and devices that accept these forms of mediums are also readily available." *Id.*

The facts alleged by the Examiner fails to provide a sufficient motivation to combine the references. Simply because ATM cards and machines were well known teaches nothing as to why one of ordinary skill in the art would depart from the principle teaching of Downing, namely cardless cash withdrawal.

The failure of the Examiner to identify a proper motivation is not surprising given the extent of the modifications to the primary reference, Downing, suggested by the Examiner. The suggested combination would require adding a standard ATM card to a primary reference which has a stated goal of eliminating the use of a standard ATM card. The suggested combination is strikingly similar to *In re Ratti* where the court reversed the rejection holding the "suggested combination of references would require a substantial reconstruction and redesign of the elements shown in [the primary reference] as well as a change in the basic principle under which the [primary reference] construction was designed to operate." *In re Ratti*, 270 F.2d at 813, 123 USPO at 352.

The lack of a motivation is further evident when viewing Downing as a whole. As previously explained, Downing does NOT in anyway teach a mechanism for providing ATM cards to the recipient of a money transfer transaction. In fact, the goal of Downing is to provide for money transfers without the use of an ATM card by the recipient.

*Schenck v. Nortron Corp.*, provides a good example where the differences in the prior art and the claimed invention as a whole demonstrate the non-obviousness of the claimed invention. *Nortron* argued the invention is just making integral what had been made in four bolted pieces,



Application No. 10/716,637  
Attorney Docket No. JDC-002-US  
Applicant's Appeal Brief  
Page 8 of 15

improperly limiting the focus to a structural difference from the prior art and failing to consider the invention as a whole. The prior art perceived a need for mechanisms to dampen resonance, whereas the inventor eliminated the need for dampening via the one-piece gapless support structure. "Because that insight was contrary to the understandings and expectations of the art, the structure effectuating it would not have been obvious to those skilled in the art." 713 F.2d at 785, 218 USPQ at 700 (citations omitted) (Claims were directed to an oil seal comprising a bore engaging portion with outwardly biased resilient spring fingers inserted in a resilient sealing member. The primary reference relied upon in a rejection based on a combination of references disclosed an oil seal wherein the bore engaging portion was reinforced by a cylindrical sheet metal casing. Patentee taught the device required rigidity for operation, whereas the claimed invention required resiliency. The court reversed the rejection holding the "suggested combination of references would require a substantial reconstruction and redesign of the elements shown in [the primary reference] as well as a change in the basic principle under which the [primary reference] construction was designed to operate." 270 F.2d at 813, 123 USPQ at 352.). Such is the case here, where the goal of the Downing reference is to provide for cardless withdrawal of cash. The claimed invention, utilizing a standard ATM card, is contrary to the understandings and expectation of the prior art as demonstrated by Downing.

Moreover, the Examiner has not considered teachings in Downing that lead away from the claimed invention. Downing clearly states that its goal is to provide for cardless withdrawal of cash, which is "implemented more easily" with modified ATM machines. This teaching, which is indeed the principle teaching of the reference, leads away from the claimed invention.

As acknowledged by the Examiner and clear from the reference, Downing fails to teach use of a standard ATM card. To provide the teachings related to the standard ATM card, the Examiner looks to Picciallo. Further, in order to combine the cardless system of Downing as suggested by the Examiner, one of ordinary skill in the art would have had to determine how to combine the cardless system of Downing with the smart card system of Picciallo to use at standard ATMs. While Picciallo mentions ATM machines in passing (see *Picciallo* at col. 11, lines 35-44), Picciallo does not provide any detail as to how the smart card is used within the ATM network. Downing also mentions in passing that the invention, although not the preferred mode, could be adapted for use with conventional ATMs. However, Downing, like Picciallo, provides no teaching as to how this could be accomplished. The preferred embodiment, and

Application No. 10/716,637  
Attorney Docket No. JDC-002-US  
Applicant's Appeal Brief  
Page 9 of 15

indeed all disclosed embodiments, of Downing relate solely to Customer Activated Terminals (CAT's), which is a specially modified ATM made by the assignee, Citicorp. *Downing* at col. 4, lines 47-60. There is no disclosure as to how the invention of Downing could be adapted for use in standard ATMs. Picciallo provides no help as to how this might be accomplished. As such, there is no reasonable likelihood that one of ordinary skill in the art would have succeeded in combining Downing and Picciallo in the manner suggested by the Examiner.

For the reasons stated above, Applicant asserts that the group 1 claims are nonobvious in view of Downing and Picciallo.

**2. ISSUE B: Group 2 (claims 60, 71, and 74) are non-obvious in view of Downing, Picciallo, and Itoh.**

Claim 60 recites in relevant part:

determining whether said recipient receives said standard atm card; and  
if said recipient does not receive said standard atm card, providing a  
monetary credit to said sender.

Claims 60, 71, and 74 are non-obvious for the same reasons as stated with respect to the claims of Group 1 and the additional reasons stated below.

Ito focuses on the transfer of the electronic money, not the IC card which is presumed to already be in the recipient's possession. Thus, Itoh at best teaches determination of receipt of the funds, NOT the standard atm card as recited in the group 2 claims.

Additionally, Ito fails to teach determining whether the recipient receives the electronic money and, if not, providing a monetary credit to the sender. Ito only teaches providing a refund after "a certain period of time passes." *Ito* at col. 2, lines 42-47; col. 5, line 65 to col. 6, line 3. There is a no direct relationship between the receipt of the electronic money and the granting of a refund. Rather, Ito determines failure to receive the electronic money after a set period of time.

Lastly, as to the motivation to combine the references, the Examiner states that "[f]or example, if the card or funds cannot be delivered to the recipient, then they would naturally be returned to the sender to avoid the loss of money to the sender." Office Action dated November 8, 2004 at p.5. However, it is never appropriate to rely solely on "common knowledge" in the art without evidentiary support in the record, as the principal evidence upon which a rejection was based. *Zurko*, 258 F.3d at 1385, 59 USPQ2d at 1697 ("[T]he Board cannot simply reach

Application No. 10/716,637  
Attorney Docket No. JDC-002-US  
Applicant's Appeal Brief  
Page 10 of 15

conclusions based on its own understanding or experience-or on its assessment of what would be basic knowledge or common sense. Rather, the Board must point to some concrete evidence in the record in support of these findings.")

Moreover, Applicant asserts that this was not well known at the time within the context of secure money transfer. The Applicant challenges the Examiner to find such a teaching within the analogous art. 37 CFR §1.104(c)(2); *Zurko*, 258 F.3d at 1386, 59 USPQ2d at 1697 ("[T]he Board [or examiner] must point to some concrete evidence in the record in support of these findings" to satisfy the substantial evidence test).

For the reasons stated above, Applicant asserts that the group 2 claims are nonobvious in view of Downing, Picciallo, and Itoh.

**3. ISSUE C: Group 3 (claims 62-66) are non-obvious in view of Downing, Picciallo, and Corder.**

Claim 62 recites in relevant part:

wherein said requestor may allocate additional money to said standard atm card via a communications network.

Claims 62-66 are non-obvious for the same reasons as stated with respect to the claims of Group 1 and the additional reasons stated below.

Lastly, as to the motivation to combine the references, the Examiner fails to identify any motivation to combine Corder with the other references. As such, the Examiner has failed to establish the first criteria required for *prima facie* obviousness.

For the reasons stated above, Applicant asserts that the group 3 claims are nonobvious in view of Downing, Picciallo, and Corder.

**4. Group 4 (claims 67) are non-obvious in view of Downing, Picciallo, Itoh, and Corder.**

Claim 67 is non-obvious for the same reasons as stated with respect to the claims of Group 1, Group 2, and Group 3. For these reasons, Applicant asserts that the group 4 claim is nonobvious in view of Downing, Picciallo, Itoh, and Corder.

Application No. 10/716,637  
Attorney Docket No. JDC-002-US  
Applicant's Appeal Brief  
Page 11 of 15

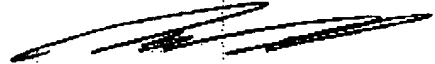
**VIV. CONCLUSION**

For the reasons set forth above, Applicant requests that the Board overturn the Examiner's rejections and pass the claims to issue.

If any matters can be resolved by telephone, Applicant requests that the Patent and Trademark Office call the Applicant's attorney at the telephone number listed below.

Respectfully submitted,

DATE: April 8, 2005

  
\_\_\_\_\_  
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Application No. 10/716,637  
Attorney Docket No. JDC-002-US  
Applicant's Appeal Brief  
Page 12 of 15

## **APPENDIX**

### **LISTING OF CLAIMS**

1. – 58. (Cancelled)

59. (Previously presented) An automated process for sending money from a first location to a second location comprising:

- receiving a request for a secure money transfer from a requestor;
- receiving information associated with a recipient for said secure money transfer;
- receiving information indicating an amount of said secure money transfer;
- transferring said amount to a standard atm card;
- assigning an access code to said standard atm card;
- providing said standard atm card to said recipient; and
- providing said access code from said requestor to said recipient;

wherein said standard atm card is a card for use in existing automated teller machines;

and

whereby said standard atm card and said access code enable said recipient to use said standard atm card in said automated teller machines.

60. (Previously presented) The process of claim 59 further comprising the steps of:

- determining whether said recipient receives said standard atm card; and
- if said recipient does not receive said standard atm card, providing a monetary credit to said sender.

61. (Previously presented) The process of claim 59,

- wherein said receiving information includes a delivery address personal to said recipient;

and

wherein the step of providing said standard atm card to said recipient provides said standard atm card at said delivery address personal to said recipient.

62. (Previously presented) The process of claim 59, wherein said standard atm card is used to transfer money from said requestor located in a first country to said recipient located in a second

Application No. 10/716,637  
Attorney Docket No. JDC-002-US  
Applicant's Appeal Brief  
Page 13 of 15

country, and wherein said requestor may allocate additional money to said standard atm card via a communications network.

63. (Previously presented) The process of claim 62, wherein said amount is provided by said requestor in a first currency and provided to said recipient in second currency, wherein said first currency and said second currency are of different nationalities.

64. (Previously presented) An automated process for sending money from a first location to a second location comprising:

- receiving a request for a secure money transfer from a requestor indicating a destination for said transfer and an amount for transfer via a communications network;
- assigning said amount to a standard atm card;
- assigning an access code to said standard atm card;
- providing said access code from said requestor to said recipient;
- providing said standard atm card to said destination such that a recipient receives said standard atm card enabling said recipient to withdraw funds from an automated teller machine using said standard atm card and said access code, wherein additional amounts may be assigned to said standard atm card by said requestor for retrieval by said recipient.

65. (Previously presented) The process of claim 64 further comprising:

- receiving an additional request from said requestor via said communications network indicating a sum of money to be added to said standard atm card for retrieval by said recipient using said standard atm card.

66. (Previously presented) The process of claim 64 wherein said destination is an address personal to said recipient.

67. (Previously presented) The process of claim 64 further comprising the steps of:

- determining whether said recipient receives said standard atm card; and
- if said recipient does not receive said standard atm card, providing a monetary credit to said requestor.

Application No. 10/716,637  
Attorney Docket No. JDC-002-US  
Applicant's Appeal Brief  
Page 14 of 15

68. (Previously presented) An automatic money transfer system for transferring money from a donor to a donee comprising:

- an automated server system for facilitating the secure transfer of money from a donor to a donee, said automated server system being operative to allocate funds to a standard atm card and to assign a security code to said instrument, said standard atm card including machine readable information;

- a data storage device for recording said secure transfer; and

- a delivery system for providing said standard atm card to said donee enabling said donee to access said funds from an existing automated teller machine using said standard atm card and said security code;

- wherein said donor provides the security code to the donee.

69. (Previously presented) The system of claim 68 wherein said security code is contained in said machine readable information.

70. (Previously presented) The system of claim 68 wherein said security code must be manually entered on said automated teller machine by said donee in order for said donee to receive money.

71. (Previously presented) The system of claim 68 further comprising:

- means for determining whether said donee receives said standard atm card; and

- means for providing a monetary credit to said donor if said donee does not receive said standard atm card.

72. (Previously presented) The system of claim 68 further comprising:

- a data storage device for storing a delivery address personal to said donee; and

- wherein said delivery system is configured for proving said standard atm card to said donee at said delivery address personal to said donee.

Application No. 10/716,637  
Attorney Docket No. JDC-002-US  
Applicant's Appeal Brief  
Page 15 of 15

73. (Previously presented) An automated process for sending money from a first location to a second location comprising:

- receiving a request for a secure money transfer from a requestor;
- receiving information associated with a recipient for said secure money transfer;
- receiving information indicating an amount of said secure money transfer;
- transferring said amount to a standard atm card;
- assigning an access code to said standard atm card;
- providing said standard atm card to said recipient at an address personal to said recipient;

and

- providing said access code to said recipient;
- wherein said standard atm card is a card for use in existing automated teller machines;

and

- whereby said standard atm card and said access code enable said recipient to use said standard atm card in said automated teller machines.

74. (Previously presented) The process of claim 73 further comprising the steps of:

- determining whether said recipient receives said standard atm card; and
- if said recipient does not receive said standard atm card, providing a monetary credit to said sender.

75. (Previously presented) The process of claim 73, wherein said access code is provided to said recipient by said sender.



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